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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

RUPERT ROE,

Defendant and Appellant.

B201370

(Los Angeles County
Super. Ct. No. BA312218)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Charlaine F. Olmedo, Judge. Affirmed.

David M. Thompson, under appointment by the Court of Appeal, for Defendant
and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Paul M.
Roadarmel, Jr. and Jaime L. Fuster, Deputy Attorneys General, for Plaintiff and
Respondent.

INTRODUCTION

Defendant Rupert M. Roe appeals from a judgment of conviction entered after a jury found him guilty of kidnapping (Pen. Code, § 207, subd. (a))¹ in counts 1 and 2.² The jury found the great bodily injury allegation (§ 12022.7, subd. (a)) in count 2 to be not true. The trial court found the prior conviction allegations under the “Three Strikes” Law (§§ 667, subds. (b)-(i), 1170.12) to be true.

The trial court denied defendant’s request to dismiss a Three Strikes prior and sentenced him to 25 years to life on each count, but ran the sentences concurrently. Later, the prosecution filed a request for modification of sentence and the trial court imposed consecutive terms of 25 years to life as to each count.

On appeal, defendant claims the trial court erred when it vacated his original sentence and imposed consecutive 25 years to life terms.³ We reject his claim of error and affirm the judgment.

FACTS

Prosecution

Veronica Torres (Torres) lived with her boyfriend, Gunther Morreale (Morreale). Her stepfather, Roberto Castro, lived nearby as did her half-brother, Geno Castro. Roberto’s nephew and Geno’s cousin, Steven Castro, and possibly Geno, may have been

¹ All further statutory references are to the Penal Code.

² The jury was unable to reach a unanimous verdict as to the remaining counts: kidnapping for ransom (§ 209, subd. (a)) in counts 3 and 4; torture (§ 206) in count 5; assault with a deadly weapon (§ 245, subd. (a)(1)); and false imprisonment by violence (§ 236) in counts 7 and 8.

³ Defendant, in a handwritten letter to the clerk, raises issues not addressed by appellate counsel. As a rule, we do not recognize pro se documents filed by defendants who are represented by counsel. (*People v. Clark* (1992) 3 Cal.4th 41, 173.)

dealing large quantities of cocaine. Steven had several boxes of contraband in Geno's apartment and the boxes were missing.⁴

On March 27, 2006, around 8:00 a.m., Torres returned home after dropping her daughter off at school. Defendant came out of a van that was parked in the middle of the street and asked if she knew Geno. When she answered in the affirmative, defendant took Torres by the arm and pushed her into the van.

While another man drove around the neighborhood, defendant asked Torres where her boyfriend was. Even though he was home, she lied and said he was at work. Defendant asked her if she knew Flash, who was one of her neighbors. She answered in the affirmative and defendant inquired where Torres and Flash lived. Defendant got out of the van and went to look for Flash. Defendant returned and said that Flash did not want to come out. They drove to Morreale's workplace.

Torres tried to warn her boyfriend by sending him a text message informing him of the situation. The text message was "Escape." Morreale called her, was able to hear the conversation in the van and realized that Torres had been kidnapped. He knew the kidnappers were waiting for him at his workplace and he suspected that the kidnappers wanted him. Morreale was not involved in drug dealing but knew that Geno and Steven were drug dealers and that Geno had a large quantity of cocaine in his home. Flash had told Morreale about a person knocking on his door and mentioning he had a message from Geno.

Morreale arrived at his workplace, parking next to the van. He went to the passenger side, and defendant told him to enter the van. He tried to get Torres released, but defendant refused. Defendant asked Torres and Morreale about the whereabouts of his drugs and "things." They denied any knowledge of missing property.

The kidnappers drove onto the Harbor Freeway and stopped at an unknown location for about 45 minutes. Steven entered the van and told Torres and Morreale that

⁴ For ease of reference and to avoid confusion, we will use the Castros' first names.

they needed to tell where the “stuff” was. Torres believed that Steven was fabricating the story about missing drugs. As they drove to another location, Steven, defendant and the driver repeatedly threatened to kill Torres and Morreale if the drugs were not found.

The van stopped at another location, and defendant took Morreale into a room on the second floor of a house. Morreale saw Geno tied up, and his face was swollen. Morreale was placed in the same room with Geno. A masked man came in and asked Geno whether Morreale knew where the “stuff” was. Geno said no and indicated that only Geno and Flash were responsible. Defendant punched Morreale’s face and broke his nose. Morreale continued to deny any knowledge about the missing drugs. Morreale was beaten and then tied up.

Torres saw defendant talking to Cliffany Jackson (Jackson).⁵ About 45 minutes after arriving at the location, defendant took Torres into the house and she saw Geno in one of the rooms. He was beaten up. Torres also saw Morreale in the room across from Geno. Morreale was tied up and also had been beaten up.

Steven and a masked man told Torres that she would be released and she was to tell the family that Geno, Morreale and Flash had “caused all of this.” Torres agreed to do so and asked to be freed. Steven and defendant took Torres to the van and drove around the city. Around 7:00 p.m., they received a call that Morreale had escaped. They stopped at a house and defendant left the van.

Steven then took Torres back to her neighborhood. A call was made to Roberto to arrange a meeting to exchange Torres for Roberto. Roberto gave Torres the keys to his car, and then Steven and Roberto drove away together. Torres drove home and called 911.

Steven took Roberto to see defendant. Defendant told Roberto not to worry about his son because he was fine. Defendant also mentioned that he believed Geno and Steven were involved in the cocaine theft.

⁵ Jackson was a codefendant below but is not a party to this appeal.

Torres told Los Angeles Police Detective Daryl Maxwell that she would be able to lead the police back to the house where Geno and Morreale were beaten. When at the location, Torres recognized defendant as one of the three people that came out of the house. Morreale's DNA was in some of the bloodstains found on the walls of one of the bedrooms. A fingerprint lifted from a piece of glass in one of the rooms belonged to defendant.

When shown six-pack of photographs, Torres, Morreale and Roberto all recognized defendant as the man in the van or as one of the assailants. Torres recognized defendant's face and a "PIRU" tattoo on the right side of his neck. Morreale also recognized defendant's face and the Piru tattoo.

Detective Maxwell testified that when defendant was arrested, he had a "fresh" rose tattoo on his neck where he previously had the Piru gang tattoo. He believed the rose tattoo was very recent because defendant's skin was still peeling at the tattoo site. Defendant also had other tattoos including a "Soowoop Gangster" tattoo on the left side of his neck, which Morreale had described.

Defense

Defendant's defense was based upon misidentification. Defendant's cousin, Thomas Devoux, was a Samoan from Carson, an area with a large Samoan population. He testified that Piru and Soowoop neck tattoos were common among Samoan Piru gang members.

Los Angeles County Sheriff's Deputy John Leuvai testified that a number of Samoans live in Carson. It is common for Samoan Piru gang members to have tattoos.

Jeff Rak, a forensic prints specialist with the Los Angeles Police Department, compared fingerprints from the duct tape at the crime scene. The prints did not belong to defendant or Jackson. Also, other fingerprints lifted from glass found at the crime scene did not belong to them.

Defendant testified in his own behalf. He testified that he got married on March 23, 2006, and was in a Torrance hotel with his wife on March 27, 2006. He

covered up the Piru tattoo on his neck with a tattoo of a rose before his wedding. He denied knowing Jackson or committing the crimes against Morreale and Torres.

Rebuttal

Detective Maxwell observed Piru gang handwriting on a door in the garage area of the townhouse where Geno and Morreale were beaten.

DISCUSSION

Defendant contends that the trial court erred when it vacated his original sentence and imposed consecutive terms. We disagree.

At the original sentencing hearing on July 11, 2007, the trial court imposed concurrent terms of 25 years to life as to each count, without explaining the reasons for the sentencing choice. On October 3, 2007, the prosecution filed a request for modification of sentence, claiming that the concurrent terms constituted an unlawful sentence because consecutive terms were mandated under the Three Strikes Law. On January 11, 2008, the trial court found that the original sentence was unlawful and that consecutive terms should be imposed because the counts involved separate victims of separate kidnappings. It therefore imposed consecutive sentences.

The trial or appellate court may correct an illegal sentence at any time, even if the corrected term is more onerous than the original unauthorized term. (*People v. Dotson* (1997) 16 Cal.4th 547, 554, fn. 6; *In re Ricky H.* (1981) 30 Cal.3d 176, 191.) Hence, if the sentence was illegal, the trial court had the power to correct it.

Consecutive sentencing is mandated by the Three Strikes Law for any current felony convictions “not committed on the same occasion, and not arising from the same set of operative facts.” (§ 667, subd. (c)(6); *People v. Deloza* (1998) 18 Cal.4th 585, 590-591; *People v. Hendrix* (1997) 16 Cal.4th 508, 512-513.) Our Supreme Court has explained that “[i]f there are two or more current felony convictions ‘not committed on the same occasion,’ i.e., not committed within close temporal and spacial proximity of

one another, *and* ‘not arising from the same set of operative facts,’ i.e., not sharing common acts or criminal conduct that serves to establish the elements of the current felony offenses of which defendant stands convicted, then ‘the court shall sentence the defendant consecutively on each count’” (*People v. Lawrence* (2000) 24 Cal.4th 219, 233.)

It is clear that the kidnapping in counts 1 and 2 were not committed on the “same occasion” within the meaning of the statute. Torres was kidnapped in front of her home in Echo Park around 8:00 a.m. Morreale was kidnapped in Burbank more than one hour later. Defendant even admits in his opening brief that “it would be understandable for a court to find that the kidnappings were not committed on the same occasion” In *People v. Lawrence, supra*, 24 Cal.4th 219, the two crimes were committed two to three minutes apart and about one to three blocks away from each other. The Supreme Court found the two crimes were not committed on the “same occasion.” (*Id.* at p. 229.)

In *People v. Jenkins* (2001) 86 Cal.App.4th 699, 703-707, the Court of Appeal found that consecutive sentencing was mandatory for an assault and an attempted murder even though the crimes were committed at the same apartment and occurred in succession. The defendant entered the victims’ apartment. He first assaulted his ex-girlfriend’s daughter while attempting to enter the bedroom of his intended victim. The defendant went to the kitchen, obtained a knife, returned upstairs, and stabbed the intended victim with a knife. It was clear that the assault was completed before the stabbing. The Court of Appeal found that the offenses were not committed on the same occasion and did not arise from the same set of operative facts.

In the instant case, Torres and Morreale were kidnapped at separate times and the kidnapping of Torres was completed prior to the Morreale kidnapping. The evidence indicates that each kidnapping may have been the part of a conspiracy to recover missing cocaine. As in *Jenkins*, however, the overlapping of criminal acts or the successive nature of the criminal acts did not make the charged offenses part of the “same set of operative facts.”

It is not relevant that Torres may have been kidnapped to facilitate Morreale's kidnapping because "there is no exception to mandatory consecutive sentences when one offense is in furtherance of another." (*People v. Jones* (1998) 67 Cal.App.4th 724, 729.) In *Jones*, defendant was sentenced to consecutive 25-years-to-life terms for burglary, forgery and intimidation of a witness. Defendant contended that the burglary was the "'original' crime and the other two offenses were 'in furtherance of the objective of the burglary.'" (*Id.* at p. 728.) The Court of Appeal concluded that the crimes were not committed on the same occasion and did not arise from the same operative facts. The burglary was committed at a residence, the forgery was based on cashing a check and the dissuading of a witness was based upon the calls and threats made to a witness. (*Id.* at p. 729.) Consecutive sentences were mandated for the crimes because they occurred at different times and locations and were based on different facts.

Likewise, in the instant case, the offenses occurred at different times and locations and involved different victims. The fact that the offenses in the instant case may have been to pursue an effort to recover missing cocaine did not mean that the two kidnappings arose from the same set of operative facts.

We find that consecutive sentencing was mandatory and the trial court properly vacated the original concurrent sentence to impose the legally required consecutive sentence.

The judgment is affirmed.

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JACKSON, J.

We concur:

PERLUSS, P. J.

ZELON, J.